

FAQ: The Labor Certification (LC) Process (PERM) Special Handling

The **Labor Certification** (LC) Process is a long and complex program used by the government to assess and approve employment-based immigration cases for a foreign national to ultimately achieve a green card. This is an employer-driven process.

Colleges and Universities are given special consideration in the LC process via the “Special Handling” process. Here, we summarize this process.

1. What is Special Handling?

It is a special provision of the LC process for colleges and universities to support the sponsorship of teachers and professors. The Special Handling is unique from the traditional LC in two main ways:

- 1) the candidate selection standard of “best qualified” (as opposed to minimally qualified) and,
- 2) the limited alternative recruitment requirement. Both of these are discussed below.

2. What is the PERM?

The **PERM** (Program Electronic Review Management) is the system that the U.S. Department of Labor (DOL) uses for employers to file the LC.

TEAMWORK

3. What does the Marks Gray Immigration Team do for clients during the Special Handling process?

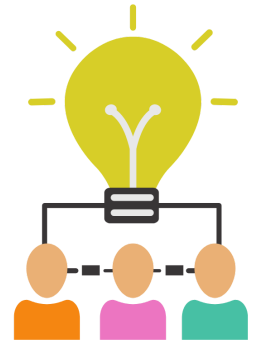
Among other services, our team will:

- Assess the likelihood of LC approval by collecting and analyzing information about the sponsoring employer, the foreign national, and the proposed job;
- Facilitate the determination of the full-time permanent job description including title, duties, and requirements;
- Research, obtain, and analyze similar certified LCs in the job category for case strategy;
- Consider and advise on the foreign national’s qualifications versus the LC job requirements including issues relating to the degree, job duties, preferences, prevailing wage, and others;
- Guide, discuss, revise and finalize experience letters and/or credentials;

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- Draft, discuss, finalize, file and obtain the Prevailing Wage Determination (PWD);
- Guide Employer with SWA & PERM registration;
- Develop recruitment strategy and recruitment efforts;
- Analyze and determine whether original recruitment for the position can be re-used;
- Help place all ads and gather documentary evidence of the process;
- Prepare and guide on notice requirements, recruitment summary letter, and statement of qualification;
- Facilitate the review of potentially qualified U.S. workers applicants and lawful reasons for potential rejection;
- Prepare, file, and monitor LC application;
- Prepare compliance file and;
- Monitor and advise about changes in law, procedure, and processing times.



4. What are the employer's responsibilities?

In order for this process to be successful, it requires collaboration from all involved. The employer's responsibilities include:

- Facilitate the assessment of the LC's likelihood of success and the determination of the full-time permanent job description including title, duties, preferences, and requirements;
- Gather and provide evidence of the original recruitment and selection process to facilitate determination if it can be re-used;
- Assist with the development and placement of recruitment and notices and gather documentary evidence of the process;
- Collect, analyze and forward to us potentially qualified U.S. workers' applications received for the position;
- Identify members of the selection committee and conduct recruitment interviews;
- Determine the best-qualified candidate and provide us with the documentation of the selection process;
- Review and sign the recruitment summary letter, statement of qualifications for the beneficiary, job confirmation letter (if applicable), posting or union notice, and other related documents prepared by our office;
- Respond to emails from the DOL following submission of the LC Special Handling application asking the employer to confirm sponsorship and;
- Collaborate with us to establish necessary documentary evidence in the event of an audit.

Please note that the employer is required by law to pay all costs and fees associated with the PERM labor certification stage. This includes attorney's fees and the costs of any advertisements.

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PREVAILING WAGE DETERMINATION

5. What is the prevailing wage?

An employer is required to obtain a Prevailing Wage Determination (PWD) from the DOL before filing the LC. The prevailing wage is the wage (hourly or annually) determined by DOL based mostly on its own surveys and the position's title, job description, requirements, and location. There are typically 4 levels.

The PW sets the minimum wage that the employer must be willing to pay the employee at the time that the employee becomes a Legal Permanent Resident. The employer has to demonstrate that it has the ability to pay the offered wage from the time the LC was filed until the foreign national receives the green card.

A concise and objective job description is essential to obtaining the most appropriate PWD. The job description should not include every duty or requirement for the position. The higher the requirements, the higher the prevailing wage.

For union positions, the DOL will use the collective bargaining agreement (CBA) wage. This documentation is submitted by us to DOL along with the PW request. For nonunion positions, the DOL will use its wage survey data to provide a prevailing wage unless an employer provides an acceptable alternative survey.

6. How do we obtain a Prevailing Wage Determination?

With the input of our clients, we analyze the position description and requirements and prepare and file the PWD request with the National Prevailing Wage Center.

The PW Request must include the job title, job description, area of intended employment, and the requirements for the job (i.e., the O*Net category, education level, years of experience, and other special requirements).



7. How long does it take for the PWD to be issued?

The law does not provide for a mandatory time period for DOL to issue a PWD for LC purposes. Currently, “clean” PWD (without a Request for Information or “RFI”) is taking 5- 8 months for adjudication.

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8. What can an employer do if it does not agree with the PW determination?

The employer can submit additional information to the DOL and request a reconsideration. However, in most cases, the DOL stands by its original determination. Often, it is necessary to reevaluate the requirements of the position and refile the PWD.

9. How important is defining the job title, duties, and position requirements to the PWD & PERM process?

They are critical components of the process and must be carefully determined. Failure to do so can prove fatal to the LC. The position description will define the pool of potential applicants; address the technical DOL requirements; the preference category (EB-2 or EB-3), and the level of the PWD; among others.

It is not permissible to tailor the job requirements to the foreign national being sponsored. For example, including a foreign language requirement can be considered unduly restrictive and trigger an audit.

Because the institution can select the best-qualified candidate based on a wide variety of factors, minimum requirements alone do not fully qualify any individual for the position.

Below are some general guidelines:

- The minimum requirements should not exceed those of other teachers or professors in the same position;
- The foreign national must be able to show that he/she met the requirements at the time he/she began work in the offered position;
- The employer cannot require teaching skills or experience that the employee acquired while working for the sponsoring employer;
- The job description **MUST** contain classroom teaching as a part of the job duties;
- The use of “preferred” must be carefully considered (see more below);
- The job description and ads must contain the job title, teaching duties, minimum requirements, work location, employer name, and specific address or method by which to submit applications.



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10. Should an employer use the standard job description for the LC application?

Most standard company job descriptions will not meet the requirements of the DOL for LC purposes. DOL compares the job duties and requirements for the position with keywords, job duties, and requirements described in DOL's Occupational Outlook Handbook and the O*Net job summary.

If the job description is inconsistent with the DOL's expectations, the employer might receive an audit to explain the differences and justify them based on business necessity.

RECRUITMENT FOR SPECIAL HANDLING CASES

11. How does recruitment work for Special Handling cases?

Under Special Handling, the employer can use special recruitment and documentation procedures or the traditional recruitment process.

The special recruitment allows the employer to select the "more qualified applicant" (not the minimally qualified applicant which is the standard for the traditional LC process), and to re-use the prior selection process if that selection occurred no more than 18 months before the LC application will be filed. The recommended approach is to use the date listed on the offer letter as the date of selection.

If the 18-month window has passed, or if the original ad does not conform to DOL regulations, a "re-selection" process must be undertaken, which will essentially re-test the labor market, and involves, among others, placing a new journal advertisement, and convening a selection committee to determine if the foreign national employee is the best-qualified candidate for the position.

12. What advertisement and notices are required for Special Handling Cases?

One advertisement must be placed in a national professional journal (generally the Chronicle of Higher Education), in print for one edition, or online for at least 30 calendar days on the national journal's website.

A Notice of Job Opportunity must be given to the bargaining representatives of the occupational classification for which certification is sought in the location(s) of intended employment. Evidence that this notice was given is typically a copy of the letter and the PERM Application sent to the bargaining representative.



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13. How do the preferences in the job description impact the candidate's selection?

Preferences listed in advertisements are considered "implicit requirements."

For example, if the job description includes "Ph.D. preferred" and the sponsored employee did not have a Ph.D. at the time of hire, the employee will not be considered the best qualified for the position and DOL will deny the LC.

14. Can work experience gained on the job be used?

Work experience gained with the sponsoring employer cannot be used to demonstrate qualifying experience unless that experience was gained with the sponsoring employer's affiliates, subsidiaries, and overseas entities, as long as the other related entities do not have the same federal employer identification number (FEIN) as the sponsoring employer.

PERM (LABOR CERTIFICATION) SPECIAL HANDLING

15. Is the employer required to register with the DOL to file an LC?

Yes. We guide and work concurrently with our clients through this process which can take from a few days to a few weeks.

16. How long does it take the DOL to process a PERM application?

Currently, "clean" applications (without an audit or other request) are taking 6 to 7 months from filing of the PERM application to certification.

17. What documentation is required after the PERM Special Handling filing?

The employer is required to collect and maintain various documents as part of the LC process.

We prepare a PERM "Compliance File" for our clients which must be kept with the employer for a minimum of five (5) years after the LC application has been submitted. The Compliance File contains:

- A copy of the submitted PERM application (Form ETA 9089);
- Prevailing wage determination;
- Signed and dated Recruitment Summary Letter;
- Copies of tear sheets for any print ads (if applicable);
- Copies of website printouts for internet postings (if applicable);
- Signed and dated internal posting notice or union notice;
- Signed and dated Statement of Qualifications for the Beneficiary;
- Copy of original offer letter or new job confirmation letter.

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18. Does a part-time position qualify for PERM labor certification?

No. The job offer must be for a permanent and full-time position. The PERM position is a future position that becomes active after the issuance of the green card.

19. How to determine whether a position qualifies for EB-2 or EB-3 immigrant preference categories?

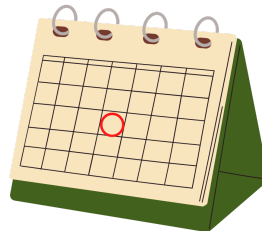
The determination of whether the position qualifies for EB-2 or EB-3 is made by the employer based on business practices and reflected in the job description and LC.

- For an **EB-2** petition, the position must require at least a Master's Degree (or foreign equivalent) or a Bachelor's degree and five years of progressive experience.
- For an **EB-3** petition, the position must require at least a Bachelor's degree.

20. What is the priority date and why is it important?

The date that the LC is filed with the DOL sets the priority date. This date is important because it places the foreign national "in line" for an immigrant visa.

The priority date determines when a foreign national can file for adjustment of status (AOS), the last step of the green card process. If the priority date is not current, the foreign national waits "in line" for the priority date to become current.



ADDITIONAL RESOURCES

Visit our [Resource Hub](#) and explore our FAQs, Blogs, Videos, and more for additional information about the LC PERM process and other related corporate immigration and compliance questions.

Subscribe to our [Newsletter](#) to stay informed and up-to-date with recent news and updates on corporate immigration and compliance.

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